

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1105

(Delegate Dembrow)

Judiciary

Crimes - Sexual Offenses Involving Minors - Solicitations

This bill prohibits a person from soliciting a minor or someone a person believes to be a minor with intent to commit rape or a sexual offense with the minor. A violator is guilty of a felony and subject to maximum penalties of a fine or \$5,000 and/or imprisonment for five years. A violator may be charged, prosecuted, tried, and convicted in any county in which the solicitation originated or terminated or where the violation was intended to occur. The bill also repeals a prohibition on persuading or enticing certain minors with the purpose of committing sex-related offenses.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provision. Revenues would not be affected.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: Maryland's criminal code prohibits sex with minors and, by common law, prohibits the solicitation of sex with a minor. Depending on the age of the victim and the circumstances of the event, a person engaging in sexual acts with a minor could be subject to a charge of second degree rape; second, third, or fourth degree sexual offense; or child sexual abuse. Penalties range from a fine of up to \$1,000 and/or

imprisonment for up to one year (for a misdemeanor fourth degree sexual offense) to a maximum imprisonment of 20 years (for the felony of second degree rape or child sexual abuse that results in the death of the victim).

Under case law, a solicitation consists of the accused person's oral or written efforts to activate another to commit a criminal offense. Because the minor is not guilty of a criminal offense under the sexual offenses law, but is rather the victim, it does not appear that the common law crime of solicitation would apply to a person who requests a minor to engage in sexual relations.

For purposes of prostitution or committing a sexual offense, a person may not: (1) persuade or entice or aid in the persuasion or enticement of an individual under the age of 16 years from the individual's home or from the custody of the individual's parent or guardian; or (2) knowingly secrete or harbor or aid in the secreting or harboring of an individual under the age of 16 years who has been persuaded or enticed in the manner described above. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$5,000 and/or imprisonment for ten years.

The State may institute a prosecution for this misdemeanor at any time. For purposes of the Maryland Constitution, the person: (1) is deemed to have committed a misdemeanor whose punishment is confinement in the penitentiary; and (2) may reserve a point or question for in banc judicial review.

Background: This bill is in response to a case currently before the Maryland Court of Appeals wherein the Attorney General is appealing the dismissal of charges in the Frederick County Circuit Court against Donald Taylor, Jr., 44, of Camden, New Jersey, for three counts of solicitation of a minor on the computer. Taylor was also charged with an attempted third degree sex offense, which involves intercourse with a person 14 or 15 years of age, where the perpetrator is at least 21 years of age, and with attempting to assault a minor in the second degree.

In October 1999, the police received a complaint about Taylor. A State police officer, posing as "Stephanie," a 15-year-old girl living in Frederick, began having internet chat conversations with Taylor. The judge in the case granted Taylor's motion to dismiss all of the charges. She dismissed the charges of solicitation of a minor over the internet because there was no minor involved. She dismissed the attempted third degree sex offense on two grounds: that Taylor had not taken a substantial step toward commission of the crime, and that it was impossible for Taylor to have committed the crime because there was no minor involved.

Arguments on this appeal were heard by the Court of Appeals in May 2001 (*State of Maryland v. Donald Taylor, Jr.*, case number 124 of the September term 2000). As of this writing, an opinion has not been issued.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$300 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2003 are estimated to range from \$10 to \$61 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues could increase minimally as a result of the bill's monetary penalty provision since these cases would most likely be heard in the circuit courts.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$20 to \$84 per inmate in fiscal 2003.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services
(Division of Correction), Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2002
lsc/cer

Analysis by: Guy G. Cherry

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510